



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EVERGREEN TERRACE WEST OWNERS)
ASSOCIATION)

For Appellant: Bryant L. Fleming, President

For Respondent: Bruce W. Walker
 Chief Counsel

John R. Akin
Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code^{1/} from the action of the Franchise Tax Board in denying the claim of Evergreen Terrace West Owners Association for refund of franchise tax in the amount of \$200 for the income year ended July 31, 1977.

1/ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Appeal of Evergreen Terrace West Owners Association

The **sole** issue presented is whether appellant is subject to **the** minimum franchise tax.

Appellant is a nonprofit corporation whose primary activity is providing for the maintenance, preservation and architectural control of a condominium in Goleta, California. It was organized and incorporated under the California General Nonprofit Corporation Law (Corp. Code, **§§** 9000 et seq.) on August 2, 1972.

In 1974, appellant applied to respondent for an exemption from taxes, claiming that it qualified as an exempt organization, both as a "civic league" and a "social club," as defined in sections **23701f** and **23701g**, respectively. Respondent determined that appellant was not an exempt organization within the meaning of those provisions. Since this action by respondent there has been no change in either appellant's primary activity or the provisions of the law which would affect appellant's previously determined non-exempt status. Appellant in all years subsequent to **incor-**poration has paid the minimum franchise tax.

In its tax return for the income year ended July 31, 1977, appellant claimed a refund for the previously paid \$200 minimum franchise tax, contending that legislation (Stats. 1975, ch. 514, p. 1079, adding section 24311) exempted appellant from the minimum tax. Respondent denied the claim, and this timely appeal followed.

Section 23153 provides, in pertinent part:

(a) **Every corporation not** otherwise taxed under **this chapter** [~~chapter~~ **2**, relating to the bank: and corporation **franchise** tax, **§§** 23101-23364a] and not expressly exempted by the provisions of this part or the Constitution of this state shall pay annually to the state a tax of one hundred dollars (\$100). ..

* * *

(b) For income years beginning after December 31, 1971, the one hundred dollars (\$100) specified in subdivision (a) shall be two hundred dollars (\$200) instead of one hundred dollars (\$100). (Emphasis added.)

Appeal of Evergreen Terrace West Owners Association

In section 23038 the term "corporation" is defined, in pertinent part, as follows:.

'Corporation' includes every corporation except:

(a) Banks

(b) Corporations expressly exempt from the tax by this part or the Constitution of this state.

For the purposes of the tax imposed under Chapter 3 [the corporation income tax, §§ 23501-23572], "corporation" also includes associations (including nonprofit associations that perform services, borrow money or own property), other than banking associations, and Massachusetts or business trust. For the purposes of this part, a Massachusetts or business trust includes every business organization consisting essentially of an arrangement whereby property is conveyed to one, or more than one, trustee for purposes other than the mere conservation of **assets, collecting and disbursing of fixed or periodic income,** or the securing of an obligation, (Emphasis added.)

Consequently, every "corporation," as defined in section 23038, except associations and Massachusetts or business trusts, must pay at least the minimum franchise tax of \$200 (even though inactive or operating at a **loss**) unless it is exempted from the franchise tax by specific statutory or constitutional provisions. On the other hand, **an** association (or Massachusetts or business trust) **is not** defined as a "corporation" for purposes of the franchise tax; it is defined as such for purposes of the corporate income tax for which there is no minimum tax.

An "association" is not defined in the Revenue and Taxation Code; in the absence of a specific applicable statutory definition, **however**, the term is generally accepted to mean an unincorporated body of persons united and acting together without a charter, but by methods and forms used by incorporated bodies for the prosecution of some common

Appeal of Evergreen Terrace West Owners Association

enterprise. (See, e.g., Hecht v. Malley, 265 U.S. 144 [68 L. Ed. 949] (1924); 7 Cal. Jr. 3d, Associations and Clubs, § 1, p. 115; Black's Law Dict. (4th Ed. 1951) p. 156, col. 2.)

Appellant was incorporated in 1972 under the General **Nonprofit Corporation** Law. **Inasmuch** as it is incorporated, it is not an association. While the word "association" is included in its name, this does not alter the fact that it is **actually** incorporated, and consequently subject to the minimum franchise tax.

Appellant, as previously indicated, relies upon section 24311, in urging **that it** is exempt from the minimum franchise tax. Section **24311^{2/}** provided, in pertinent part, as follows:

(a) Gross income does not include amounts received as **contributions**, assessments or dues from owners or shareholders of a condominium project (as defined in Section 783 of the Civil Code) or a cooperative housing project (as defined in Section 11003.2 of the Business and Professions Code) or members of a real estate housing project (as defined in Section 11003.1 **or** 11004 of the Business and Professions Code) which are transferred to and held in trust in a capital expansion trust fund, or are transferred to and held in trust in a repair and maintenance trust fund, if such **amounts are** actually expended in the trust manner prescribed and a majority of the shareholders, owners or members approve such transfer and allocation at an election held for such purpose. 'For the **purpose** of this section, capital expansion trust fund expenditures must be solely for capital improvements on commonly owned property within the project, and repair and maintenance trust fund expenditures must be solely for repair or maintenance of commonly owned property within the project.

This section excluded from the income of certain entities, organized for the repair and maintenance, or improvement of a condominium project, those contributions, **assessments**, or dues from owners of units therein which are held in either a repair and maintenance trust fund or a

^{2/} This provision has been repealed. '(Stats. 1977, **ch. 1079.**)

Appeal of Evergreen Terrace West Owners Association

capital **expansion trust** fund and are used exclusively for repairs and maintenance or capital improvements on commonly owned property within the project. Therefore, this section is concerned with the exclusion of certain amounts from the gross income of specified entities. It does not exempt them from the minimum franchise tax.

Appellant has submitted as a part of its argument a copy of a memorandum issued by respondent discussing the legislative change brought about by the enactment of section 24311. The appellant appears to be confused by the contents of the second paragraph of the memorandum and this confusion may result from appellant's name. This particular paragraph **merely outlines the law as it existed** prior to the enactment of section 24311. In essence the paragraph explains that the particular organizations described in section 24311, (1) were paying a 9 percent franchise tax with a minimum franchise tax of \$200, if they were "corporations," and, (2) were paying a 9 percent corporate income tax with no minimum, if they were "associations." Appellant is named "Evergreen Terrace West Owners Association" and **is** apparently relying on the "association" portion of **its** name to arrive at its position in this matter. For purposes of the franchise tax, appellant is not an association; instead appellant is a corporation duly organized and incorporated **under the corporation laws of this state.** **The name** of appellant is not the proper basis for determining its true nature as an entity.

For these **reasons**, we must sustain respondent's action.

Q R D-E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

